

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Duke Energy Corporation
Duke Energy Commercial Asset Management, Inc.
Duke Energy Lee II, LLC

v.

Docket No. EL14-45-000

PJM Interconnection, L.L.C.
PJM Settlement, Inc.

**COMMENTS
OF THE PJM POWER PROVIDERS GROUP**

On May 5, 2014, Duke Energy Corporation, Duke Energy Commercial Asset Management, Inc., and Duke Energy Lee II, LLC (“Duke”) filed a formal complaint against PJM Interconnection, L.L.C. and PJM Settlement, Inc. (“PJM”) alleging that, PJM failed to fulfil its obligation under the PJM Open Access Transmission Tariff section 10.3 to indemnify Duke for its obligation to third parties arising out of its good faith performance of a PJM directive, or, in the alternative, grant a waiver of specific PJM tariff provisions that thwart Duke’s ability to recoup their losses in this matter (“Duke Complaint”).¹ On May 5, 2014, the Federal Energy Regulatory Commission (the “Commission” or “FERC”) issued a Notice of Complaint setting May 27, 2014, as the deadline to intervene or protest the filing. On May 8, 2014, pursuant to

¹ *Duke Energy Corporation, et al. v. PJM Interconnection, L.L.C., et al.*, Docket No. EL14-45-000, May 5, 2014.

Rule 214 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. § 385.214 (2014), the PJM Power Providers Group (“P3”)² submitted a doc-less motion to intervene.

P3 respectfully submits comments³ noting the following as further explained below:

- Market participants should not be economically harmed as a result of following the instructions of PJM; and
- the Commission should direct PJM to take measures in order to clarify its rules to ensure that market participants are protected from such harm.

I. COMMENTS

A. Market Participants Should Not be Economically Harmed by Following the Instructions of PJM.

In its Complaint, Duke explains it followed a directive of PJM and as a result suffered substantial economic harm. Duke avers that it was directed by PJM “to help PJM maintain the reliability of its system by ‘securing’ the gas without regard to economics”⁴ Although Duke questioned PJM’s apparent directive based on economic concerns, PJM stated that in order to maintain system reliability Duke should acquire gas prior to PJM’s anticipated need. Duke states that the company acted pursuant to PJM’s apparent directive and should be compensated for economic losses that occurred when PJM never called upon the units in the real time market.

² P3 is a nonprofit corporation dedicated to promoting policies that will allow the PJM region to fulfill the promise of its competitive wholesale electricity markets. P3 strongly believes that properly designed and well-functioning competitive markets are the most effective means of ensuring a reliable supply of power to the PJM region, facilitating investments in alternative energy and demand response technology, and promoting prices that will allow consumers to enjoy the benefits of competitive electricity markets. Combined, P3 members own over 87,000 megawatts of generation assets, own over 51,000 miles of transmission lines, serve nearly 12.2 million customers and employ over 55,000 people in the PJM region – encompassing 13 states and the District of Columbia. For more information on P3, visit www.p3powergroup.com

³ The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

⁴ Duke Complaint, p. 5.

PJM never called the units for which gas was purchased, and Duke, after undertaking mitigation efforts, had unrecovered gas costs of almost \$10 million.

Assuming the facts presented by Duke to be true,⁵ when a generator relies on a clear communication from its RTO/ISO and takes actions relying on such an instruction, particularly in a moment when the grid is under stress and the prospects of reliability are uncertain, such generator should not be economically punished for “doing the right thing.” In this case, according to the facts asserted, Duke was performing as directed by PJM and incurred substantial financial harm as a result. In situations such as this, a generator should be compensated for its losses.

Failure to compensate market participants who incur economic losses as a result of following the direction of the RTO – particularly when that direction is related to reliability – would lead to an untenable market construct in which market participants would be forced to question or perhaps ignore the RTO. Risk of a substantial economic loss should not be a consideration when a generator is being told that a unit is required in order to keep lights on and homes warm. Admittedly, the facts in this case speak to a broader need to improve coordination between the gas and electricity markets; however, as a general market principle, the Commission should stand firm and ensure that market participants should not be harmed by following a RTO directive.

As this market principle relates to the facts of this matter as presented in the Complaint, Duke relied on the apparent directive of the RTO to its detriment and should be compensated. As a means to an end, P3 supports recovery of Duke’s losses under either Section 10.3 of the PJM tariff or under the terms of a “Duke-specific limited waiver.” Under either remedy, the

⁵ P3 makes no representations as to the accuracy of the facts presented by Duke.

Commission would be sending the appropriate message to market participants. Namely, if your RTO is telling you to take action to maintain reliability, you can and should do so without fear of economic harm.

B. P3 Urges the Commission to Direct PJM to Take Measures in Order to Clarify its Rules

As stated above, the facts of the Duke Complaint speak to the broader need to address issues related to gas-electric coordination. In many respects in this matter, the gas provider, the power generator, and PJM were faced with circumstances that were never seen before and of an order of magnitude that were considered unimaginable by most. Now the Commission must address the issue. While it is important and appropriate for the Commission to remedy the inequities that must be resolved from this winter, it is equally important that clear rules are in place for the next time PJM faces a similar challenge—rules that ensure recovery of costs, including gas balancing costs, for following a PJM directive.

January 27 and 28, 2014, the period of time underlying the Duke Complaint, occurred during a winter of unprecedented cold weather.⁶ Although the extreme cold and resulting natural gas prices were unprecedented, this scenario is not unique. Therefore, P3 urges the Commission to direct PJM to take measures to clarify its rules so that market participants are assured that economic harm will not result from following a directive of a PJM operator.

PJM's rules should be crafted with unambiguous clarity so that a market participant knows what actions to perform under certain situations and can take those actions confident that economic harm will not result. This will ensure a properly functioning market and ensure reliability, while maintaining confidence of market participants. It will avoid the need for after-the-fact remedies that undermine generator confidence in the market structure. P3 encourages

⁶ The Commission held a Technical conference on April 1, 2014, on Winter 2013-2014 Operations and Market Performance in Regional Transmission Organizations and Independent System Operators, Docket No. AD14-8-000.

the Commission to require PJM to take proper steps towards clarifying its rules, as soon as possible, to avoid situations such those discussed in the Duke Complaint.

II. CONCLUSION

For the foregoing reasons, P3 respectfully requests that the Commission compensate Duke for its economic losses that resulted from following the directive of PJM, as well as require PJM to clarify its rules to ensure that a market participant is compensated under similar circumstance in the future.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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Dated: May 27, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the Official Service List compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 27th day of May, 2014.

On behalf of the PJM Power Providers Group

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